



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 882 (Substitute S-1)  
Sponsor: Senator Tom George  
Committee: Commerce and Tourism

Date Completed: 2-12-08

## **CONTENT**

**The bill would amend the Tobacco Products Tax Act to do the following:**

- Prohibit a person from importing a tobacco product into this State or exporting a tobacco product out of this State without a license under the Act.**
- Establish criminal and civil penalties for unlawfully possessing, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or papers, or grey market cigarettes or papers in quantities smaller than those subject to current penalties.**
- Revise the definition of "unclassified acquirer".**
- Delete an exemption for secondary wholesalers from a requirement to file a return with the Department of Treasury.**

### Import & Export

The Act prohibits a person from purchasing, possessing, acquiring for resale, or selling a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this State unless licensed to do so.

The bill also would prohibit a person from importing into this State or exporting out of this State a tobacco product as a manufacturer, wholesaler, secondary wholesaler, etc., unless licensed to do so.

Under the Act, if a person, other than a licensee, is in control or possession of a tobacco product contrary to the Act, is in control or possession of an individual package of cigarettes without a stamp in violation of the Act, or offers to sell or sells a tobacco product for resale without being licensed to do so, the person is personally liable for the tax imposed by the Act, plus a penalty of 500% of the amount of tax due.

Under the bill, this penalty also would apply to a person who imported a tobacco product into the State or exported a tobacco product out of the State contrary to the Act. The person also would be subject to criminal penalties for violating the Act (described below).

### Penalties

The Act prescribes criminal penalties for various violations, including possessing, acquiring, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or cigarette papers, or grey market cigarettes or papers, in violation of the Act. The penalties

depend on the quantity of the cigarettes or papers involved, or the aggregate wholesale value of the other tobacco product. Table 1, below, shows the current penalties as well as the proposed penalties for offenses involving smaller quantities or tobacco products of less value.

Table 1

<u>Current Penalties</u>			
Quantity; Value	Offense	Maximum Fine	Max. Term
3,000 or more; \$250 or more	Felony	\$50,000	5 years
1,200-2,999; \$100 - \$249.99	Misdemeanor	\$5,000	1 year
<u>Proposed Penalties</u>			
600 - 1,999; \$50 - \$99.99	Misdemeanor	\$1,000	90 days
201 - 599; \$25 - \$49.99	Civil Infraction	\$100	NA

Under the bill, the existing and proposed criminal penalties also would apply to a person who imported or exported cigarettes, other tobacco products, counterfeit cigarettes or papers, or grey market cigarettes or papers contrary to the Act.

#### Unclassified Acquirer

The Act defines "unclassified acquirer" as a person, except for a transportation company or a retailer purchaser from a retailer licensed under the General Sales Tax Act, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under the Tobacco Products Tax Act for use, sale, or distribution. The term does not include a wholesaler.

The bill also would exclude a retailer who imports or acquires a tobacco product from a wholesaler or secondary wholesaler licensed under the Act.

#### Filing a Return

The Act requires every licensee, other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator, to file a return with the Department. The return must contain the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in them, and the number and denominations of stamps affixed to individual packages of cigarettes sold.

The bill would delete the exception for secondary wholesalers.

MCL 205.422 et al.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on local government. The bill adds the importing and exporting of tobacco products to the list of violations. To the extent that this could lead to an increase in violations, there may be an increase in penalties received. Currently, if a person commits a violation of the Act for which a penalty is not provided, the offense is a misdemeanor punishable by a fine of up to \$1,000 or five times the retail value of the tobacco products involved, whichever is greater, or imprisonment for up to one year, or both. There are no data to indicate how many offenders would be convicted of, or found civilly responsible for, violations involving fewer than 1,200 cigarettes or papers, or products worth less than \$100. To the extent that the bill resulted in decreased incarceration time, local governments would incur decreased costs of incarceration in local

facilities, which vary by county. The bill also could result in lower penal fines, which benefit public libraries.

In addition, the bill could lead to an increase in civil fine revenue, which would benefit public libraries.

Fiscal Analyst: Lindsay Hollander  
Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.